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MARK SMITH & TAMMY SMITH
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

12 MARK SMITH, an individual; TAMMY SMITH,
13 an individual;

14 Plaintiffs,

15 v.

16 NERIUM INTERNATIONAL, LLC, a limited
liability company; JO PRODUCTS, LLC, a
17 limited liability company; JEFF OLSON, an
individual; and DOES 1 through 10, inclusive,

18 Defendants.
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Case No. 30-2018-00975602-CU-BC-CJC

Assigned to: Judge Nathan Scott

COMPLAINT FOR:

- (1) FRAUD;
- (2) BREACH OF ORAL CONTRACT;
- (3) BREACH OF PARTIALLY ORAL AND WRITTEN CONTRACT;
- (4) BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING (ORAL CONTRACT);
- (5) BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING (PARTIALLY WRITTEN CONTRACT);
- (6) BREACH OF FIDUCIARY DUTY;
- (7) DEFAMATION;
- (8) CIVIL CONSPIRACY;
- (9) CONVERSION;
- (10) ACCOUNTING;

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- (11) BREACH OF IMPLIED IN FACT CONTRACTS;
- (12) VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200;
- (13) CONSTRUCTIVE TRUST;
- (14) DECLARATORY RELIEF (ORAL CONTRACT);
- (15) DECLARATORY RELIEF (PARTIALLY ORAL AND WRITTEN CONTRACT); AND
- (16) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

DEMAND FOR JURY TRIAL

Plaintiffs Mark Smith and Tammy Smith (“Plaintiffs” or the “Smiths”) complain and allege as follows against Defendants Nerium International, LLC (“Nerium International”), JO Products, LLC (“JOP”), Jeff Olson (“Olson”), and DOES 1 through 10 (collectively, “Defendants”). JOP is a 70% member in Nerium International.

THE PARTIES

1. Defendant Nerium International is a limited liability company with a principal place of business in Texas, and doing business in the State of California, County of Orange.
2. Defendant JOP is a limited liability company with a principal place of business in Texas, and doing business in the State of California, County of Orange.
3. Defendant Olson is the Manager of JOP, and the Founder and Chief Executive Officer of Nerium International.
4. Plaintiff Mark Smith is a Master Distributor, Diamond International Marketing Director, Co-Founder, and Chief Field Officer at Nerium International.
5. Plaintiff Tammy Smith is a Master Distributor, Diamond International Marketing Director, Co-Founder, and Chief Field Officer at Nerium International.
6. Plaintiffs do not know the true name and capacities, whether individual, corporate, associate, representative, partnership or otherwise, of Defendants named herein as DOES 1 through

1 10, inclusive, and thus sues these Defendants under fictitious names and capacities. Plaintiffs will
2 amend this Complaint to allege the true names and capacities of these Defendants when they have
3 been ascertained.

4 7. Plaintiffs are informed and believe, and thereon allege, that at all times relevant
5 herein, Defendants, including DOES 1 through 10, and each of them, were agents, servants,
6 employees, or affiliates of other Defendants and in doing the things alleged herein were acting in
7 the course and scope of the authority of such agency, service, employment, affiliation, or with the
8 permission, knowledge, approval and consent of the other Defendants in that each and every act of
9 each said Defendant was ratified by the others. Plaintiffs are informed and believe, and thereon
10 allege, that each of the DOE Defendants is responsible in some manner for the unlawful actions,
11 policies, practices, wrongs, injuries and harms alleged in this Complaint, and that Plaintiffs'
12 damages were legally caused by those Defendants, among others.

13 **JURISDICTION AND VENUE**

14 8. This Court has subject matter jurisdiction over Plaintiffs' claims as a court of general
15 jurisdiction. Nerium International and JOP conducted and continue to conduct business within
16 California.

17 9. This Court has personal jurisdiction over Defendant Olson pursuant to Code of Civil
18 Procedure section 410.010 because Olson leased multiple residences, including one such residence
19 located at 600 The Strand, Hermosa Beach, California, which Olson previously referred to as the
20 "California office of Nerium," and conducts a large percentage of his business in California
21 (including, but not limited to, attending sales meetings, and calling and emailing individuals in
22 California).

23 10. This Court has personal jurisdiction over Defendant Nerium International because,
24 among other things, Defendant Nerium International is doing business in the State of California and
25 Defendant Nerium International has caused injury to Plaintiffs within the State of California.
26 Further, Defendant Nerium International has more than one hundred thousand (100,000) "Brand
27 Partners" in the State of California and derives substantial revenue from sales in the State of
28 California. These "Brand Partners" are entrepreneurial distributors and salespeople who sell

1 Nerium’s products around the globe, and often include stay at home moms, students, professionals
2 who want a better work life balance, etc.

3 11. This Court has personal jurisdiction over Defendant JOP because, among other
4 things, Defendant JOP is doing business in the State of California and Defendant JOP has caused
5 injury to Plaintiffs within the State of California.

6 12. Venue is proper in Orange County pursuant to Code of Civil Procedure section 395
7 because Plaintiffs’ causes of action arise, in part, from obligations arising in Orange County and
8 damages occurred in Orange County, California.

9 **GENERAL ALLEGATIONS**

10 **I. PLAINTIFFS MARK AND TAMMY SMITH**

11 13. Mark Smith grew up in a working-class military family and he is the third-generation
12 of his family to proudly serve in the United States Armed Forces. Prior to his contract with
13 Defendants, Mark Smith was a combat medic in the United States Navy, earning several Navy
14 Achievement Medals, and the prestigious commendation of Sailor of the Year. Similarly, Tammy
15 Smith grew up in an Air Force family with two working class parents. Tammy Smith met Mark
16 Smith while he was stationed in Hawaii by the United States Navy.

17 14. Although Mark Smith wanted to spend the rest of his life in the military, where
18 values like: teamwork, cohesion, friendship, and being part of a bigger purpose were tremendously
19 important, after marrying and having their first child, Mark Smith and Tammy Smith made the
20 courageous decision to leave military life and transition full-time to Pre-Paid Legal Services, Inc.
21 (“Pre-Paid Legal”), where they believed amazing opportunities in leadership, growth and income
22 potential existed.

23 15. In their first four years with Pre-Paid Legal, the Smiths struggled and made many
24 sacrifices, including instances where they sold their cherished personal belongings (including
25 personal jewelry) to pay for gasoline to drive to their next business presentation in the hopes of
26 generating sales and leads. Despite the tough times, the Smiths were relentless and resilient, and
27 were able to build long-standing friendships and business relationships that ultimately propelled
28 them to success in network marketing. Based on this struggle and sacrifice, the Smiths were able to

1 build a marketing and sales system and infrastructure, at their own expense and through their own
2 efforts. Despite starting as distributors, the Smiths quickly became trusted with leadership roles
3 within Pre-Paid Legal and gained significant experience in the corporate side of the business (in
4 addition to the sales/distribution aspect).

5 16. Before leaving Pre-Paid Legal to join Nerium International and Olson, the Smiths
6 were: 1) earning a substantial monthly income from Pre-Paid Legal; 2) named the Pre-Paid Legal
7 Regional Vice Presidents of the Maine, Maryland, Washington D.C., Texas, and California
8 territories; and 3) awarded multiple awards and recognition for rank and income, including the
9 prestigious Chairman's Award, which was given out annually by the well-respected founder of Pre-
10 Paid Legal.

11 **II. OLSON ENTICES THE SMITHS TO JOIN NERIUM INTERNATIONAL WITH**
12 **MISREPRESENTATIONS AND FALSE PROMISES**

13 17. It was during their tenure with Pre-Paid Legal that the Smiths became acquainted
14 with Olson. While the Smiths were still at Pre-Paid Legal, Olson attempted to entice the Smiths to
15 leave Pre-Paid Legal and join Nerium International. Nerium International is a multi-level
16 marketing company that sells anti-aging skincare and wellness products under the name "Nerium."

17 18. The Smiths advised Olson that they had made many significant sacrifices to build
18 their business at Pre-Paid Legal and they would not leave Pre-Paid Legal without assurances of an
19 ownership interest in Nerium International and significant compensation based on their sales (a
20 significant royalty payment). Olson told the Smiths that the compensation they would receive as
21 "Brand Partners" at Nerium International would look like "play money" in comparison to the equity
22 distributions they would be entitled to as equity holders in Nerium International and the 15%
23 monthly royalty fees from "Nerium Edge."

24 19. In or about September of 2011, Mark Smith and Tammy Smith met with Olson to
25 further discuss the Smiths' opportunities at Nerium International. Olson represented himself as
26 Chief Executive Officer of Nerium International. During this meeting, Olson made the following
27 promises to the Smiths on behalf of himself and Nerium International: 1) Mark Smith and Tammy
28 Smith would **each** receive a 5% equity interest in Nerium International (the Smiths would together

1 own 10% of Nerium International); 2) the Smiths would be named “co-founders” of Nerium
2 International; and 3) Nerium International would pay the Smiths a combined 15% royalty, in
3 perpetuity, on all the back office subscription fees generated by Nerium International, which was
4 subsequently referred to as “Nerium Edge.” These promises were subsequently confirmed by Olson
5 in emails and/or other conversations between Defendant Olson and the Smiths, and have been
6 repeated by Olson numerous times between September of 2011 to the present.

7 20. Collectively, Olson’s promise to provide the Smiths with a 10% equity interest in
8 Nerium International, naming the Smiths co-founders of Nerium International, and the promised
9 15% royalty payment are referred to as the “Ownership Promises.”

10 21. Olson repeatedly assured the Smiths that there was nothing improper or illegal about
11 moving from one multi-level marketing company to another and, as long as the Smiths did not
12 initiate contact with their brand partners, that it would be acceptable to discuss their partners
13 coming with them to Nerium International if the network partners made the first inquiry on the
14 subject. Olson assured the Smiths that he considered that appropriate.

15 22. Olson also represented to the Smiths that he was an honest and ethical businessman
16 and treated his customers, employees, and brand partners honestly, with integrity, and respect.

17 23. Ultimately, in reliance on the Ownership Promises and Olson’s statement regarding
18 the permissible way to leave a company, the Smiths left Pre-Paid Legal and joined Olson at Nerium
19 International.

20 24. The Smiths joined Nerium International as “Brand Partners” (distributors of Nerium
21 International’s products) in reliance upon the Ownership Promises that Olson made to the Smiths on
22 behalf of himself and Nerium International and Olson’s statement regarding the permissible way to
23 leave a company.

24 25. The Smiths had no reason to doubt the Ownership Promises at the time they left Pre-
25 Paid Legal, and the Smiths would not have left Pre-Paid Legal if they had known that Olson did not
26 intend to honor the Ownership Promises or would have taken a different position with respect to the
27 permissible way to leave a network marketing company.
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1 **III. OLSON’S REFUSAL TO DOCUMENT THE AGREEMENT**

2 26. Prior to the Smiths leaving Pre-Paid Legal, Olson told the Smiths that Pre-Paid
3 Legal’s standard practice was to sue anyone who left to join a competitor. Olson told the Smiths
4 that because the Smiths generated such tremendous sales for Pre-Paid Legal, Pre-Paid Legal would
5 almost certainly sue Olson and Nerium International the moment they started working for Nerium
6 International.

7 27. In anticipation that Pre-Paid Legal would sue Nerium International and the Smiths,
8 Olson told the Smiths that Olson could not document and could not put into writing the Ownership
9 Promises until after potential litigation with Pre-Paid Legal had been resolved. Olson indicated that
10 any written agreement which documented the Ownership Promises would be discoverable in
11 litigation with Pre-Paid Legal and would be used against Olson, Nerium International, and/or the
12 Smiths. Olson further indicated that if the Ownership Promises were documented in writing, Pre-
13 Paid Legal may have a stronger case against Olson, Nerium International, and/or the Smiths.

14 28. Based on these concerns, Olson promised Mark Smith and Tammy Smith that as
15 soon as the litigation with Pre-Paid Legal was over, Olson would document and honor the
16 Ownership Promises.

17 **IV. PRE-PAID LEGAL SUES NERIUM INTERNATIONAL AND THE SMITHS**

18 29. As anticipated by Olson, immediately after the Smiths joined Nerium International,
19 Pre-Paid Legal initiated litigation against Nerium International and the Smiths.

20 30. Ultimately, the cases filed by Pre-Paid Legal against the Smiths were settled on or
21 about mid-2013.

22 **V. OLSON AND NERIUM INTERNATIONAL’S REFUSAL TO HONOR THE**
23 **OWNERSHIP PROMISES**

24 31. Immediately after the settlement of the Pre-Paid Legal lawsuits, the Smiths began
25 requesting that Olson memorialize the Ownership Promises into writing. Olson provided excuse
26 after excuse why the timing was not right to memorialize the Ownership Promises, but repeatedly
27 assured the Smiths at all times, from prior to joining Nerium International to the present, that Olson
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1 would honor the Ownership Promises. Olson routinely repeated the Ownership Promises, and the
2 Smiths trusted that Olson would live up to the Ownership Promises.

3 32. On or about May of 2016, lawyers working for Nerium International and the Smiths
4 began working on multiple drafts of a formal agreement to put into writing the Ownership
5 Promises. Since prior to joining Nerium International until the present and at all times in between,
6 Olson has repeatedly assured the Smiths that the Ownership Promises would be honored.
7 Nonetheless, six years after the Ownership Promises were initially made, after almost two years of
8 drafting by each party's attorneys to hammer out the fine points of the Ownership Promises, and
9 after numerous meetings in California to discuss the oral promise and agreement to formalize the
10 Ownership Promises, to date Olson and his attorneys refuse to sign off on an agreement.

11 33. To date, Olson and his attorneys refuse to sign off on an agreement which simply
12 memorializes the Ownership Promises. Such an agreement could be written on a single page, and
13 would take less than a minute to draft.

14 34. Instead, Olson and his attorneys have taken *years* to draft lengthy agreements which
15 acknowledge the Ownership Promises, but also include unfair and ridiculous terms that were never
16 agreed to by the Smiths and which were never before mentioned by Olson. Notably, these
17 ridiculous and unfair terms have included: (1) a provision that Olson must receive tens of millions
18 of dollars before the Smiths would receive a penny; (2) a provision that Olson would have power of
19 attorney over the ownership interests granted to the Smiths and could take control of the 10%
20 ownership interest at any time; and (3) that the 10% ownership interest would be in JOP instead of
21 Nerium International (the 10% ownership interest would be in the "wrong" entity).

22 35. Since diligently working with Olson to memorialize the Ownership Promises for
23 several years, it is now apparent that Olson has no intention of honoring the Ownership Promises,
24 and has merely been leading the Smiths along to buy himself more time (and retain for himself
25 significantly more profits).

26 **VI. THE SMITHS' EXTRAORDINARY RESULTS AT NERIUM INTERNATIONAL**

27 36. In the meantime, from the moment the Smiths joined Nerium International, the
28 Smiths spent their personal time, energy, money and resources to develop a network of Brand

1 Partners at Nerium International. As a result of the Smiths' incredible efforts, the Smiths were able
2 to generate an astonishing \$100,000,000 in sales in their first year of business. Since then, the
3 Smiths have helped Nerium International achieve record-breaking global sales of over
4 \$500,000,000 annually and over \$1,500,000,000 in aggregated sales in its first five years of
5 business.

6 37. While Nerium International likes to take the position that these Brand Partners are a
7 "trade secret," nothing could be further from the truth. Most of the Smiths' sales leaders at Nerium
8 International came from the network they developed at their own expense and on their own time
9 while at Pre-Paid Legal (hence the lawsuit filed by Pre-Paid Legal).

10 38. Further, the multi-level marketing industry is very active on social media and the
11 Smiths are well known in the community and to the Smiths' network of contacts. Specifically, the
12 network which the Smiths built consists primarily of contacts the Smiths made at Pre-Paid Legal
13 and to the extent the network was developed beyond that, it was done so at the Smiths' own expense
14 and on the Smiths' own time.

15 **VII. OLSON ENTICES THE SMITHS TO STAY AT NERIUM INTERNATIONAL**
16 **WITH MORE MISREPRESENTATIONS AND FALSE PROMISES**

17 39. After achieving incredible results at Nerium International, to induce the Smiths to
18 focus efforts on developing Nerium International as a whole and not just focus on their distribution
19 network, Olson promised the Smiths that Nerium International would install and pay Mark Smith
20 and Tammy Smith as the "Master Distributors" at Nerium International, and would pay Mark Smith
21 and Tammy Smith the "Live Better Bonus" (now referred to as the "Nerium Lifestyle Bonus")
22 permanently when earned. In effect, this would ensure that the Smiths were compensated at the
23 highest level achieved under the Nerium International compensation plan. This promise was
24 intended to allow the Smiths to stop focusing on their commissionable network and stop actively
25 recruiting to maintain their qualification. An e-mail from Olson to Mark Smith and Tammy Smith
26 documenting this promise dated September 14, 2016 is attached hereto as EXHIBIT "A."

27 40. Olson made this promise to Mark Smith and Tammy Smith because the Smiths
28 would sacrifice income by focusing on the company as a whole instead of focusing on their

1 personal network. In reliance on Olson’s promise to install the Smiths as “Master Distributors” and
2 permanently compensate them at the highest compensation level, the Smiths agreed to turn away
3 from their personal interests and focus on the company as a whole.

4 41. In or about October 2016, the Smiths achieved the highest compensation level at
5 Nerium International. Accordingly, since October 2016 the Smiths were entitled to the highest
6 compensation level in perpetuity, as repeatedly promised by Olson. However, since on or about
7 October 2016, the Smiths have not been compensated at the highest level at Nerium International.
8 As a result, the Smiths are entitled to the amount of \$491,250. However, the Smiths have not
9 received any portion of the \$491,250 owed to them.

10 42. Since this Master Distribution promise was not honored by Olson, tension began to
11 build within the Brand Partners because the Smiths had to operate as if they were Master
12 Distributors, but their compensation did not reflect such a title.

13 43. Thus, to maintain their livelihood, the Smiths were forced to continue recruiting and
14 building multiple legs within the Nerium International compensation plan. The other Brand Partners
15 perceived this recruiting and building by the Smiths as constant competition, which created an
16 unhealthy atmosphere for maximum sales growth within the Brand Partners network.

17 44. Despite Olson’s failure to honor his promise regarding the master distributorship, the
18 Smiths helped lead Nerium International to record-breaking global sales of over \$500,000,000
19 annually and over \$1,500,000,000 in aggregated sales in its first five years of business.

20 45. Further, in reliance upon the above-referenced promise and the Ownership Promises,
21 the Smiths have traveled the world to build Nerium International’s business with an even-handed
22 approach. Specifically, since 2014, the Smiths have traveled to the following countries multiple
23 times each: Canada, South Korea, Colombia, Mexico, Japan, Hong Kong, Australia, Germany, and
24 Austria.

25 46. In addition, the Smiths have travelled extensively within the United States, along
26 with incentive trips to other countries. In 2015 alone, Mark Smith traveled at least 196 calendar
27 days for the promotion of Nerium International. The extraordinary effort given by the Smiths,
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1 which even resulted in vocal cord surgery for Mark Smith on or about July 2014, was in reliance
2 upon the Ownership Promises and other above-referenced promises made by Olson.

3 47. Plaintiffs are informed and believe and thereon allege that the above-referenced
4 promises and Ownership Promises were made by Olson with intent to deceive the Smiths and that
5 Olson did not intend to honor these promises (i.e. oral contracts).

6 **VIII. OLSON’S PERSONAL ATTACKS, ERRATIC BEHAVIOR, AND GROSS**
7 **MISMANAGEMENT**

8 48. After spending significant time, money, and effort to develop their sales force
9 network at Nerium International, it became clear that Olson was not the person the Smiths thought
10 he was. Instead of an honest businessman, Olson revealed himself to be (among other things)
11 dishonest, insincere, duplicitous, and anti-Christian. Moreover, Olson revealed himself to have a
12 nasty habit of spreading hurtful falsehoods about the Smiths (and others) behind their backs.
13 Olson’s behavior created an extremely uncomfortable and hostile work environment, which the
14 Smiths found insufferable and at times completely unbearable.

15 49. On the one hand, Olson would tell the Smiths how valuable the Smiths were to the
16 organization, even going as far as to publicly state on numerous occasions that all Olson needed to
17 build the “best company in the world” was Mark and Tammy Smith at the helm of the sales force.

18 50. On the other hand, Olson would tell others in the company that: (1) the Smiths did
19 not work hard; (2) the Smiths added no value to the company; (3) no one wanted Tammy Smith to
20 work at the company; (4) the Smiths were “not who you think they are”; (5) the Smiths have
21 marriage problems; and (6) the company’s mistakes were attributable to the Smiths’ decision-
22 making, among other things.

23 51. Olson also started to express disdain for the multi-level marketing industry (“MLM”)
24 for which the Smiths had such respect and admiration. Olson began to disparage other MLM
25 companies saying they were terrible companies with bad products and other disparaging things.

26 52. The Smiths were highly offended by this as they saw other reputable MLM
27 companies as paving the way for others, like them, to succeed.
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1 53. Olson has also engaged in erratic behavior that was harmful to the interests of the
2 Smiths and Nerium International including, but not limited to: (1) bringing frivolous lawsuits
3 against individuals to chill their right to pursue employment of their own choosing; and (2) bringing
4 frivolous lawsuits against other companies he perceived as competitors to try to get a competitive
5 advantage and to intimidate them. Olson would bully individuals and companies with litigation and
6 the threat of litigation.

7 54. This significant litigation was siphoning millions upon millions of dollars of cash
8 from Nerium International creating significant cash flow issues, which has crippled the company's
9 ability to function. These cash flow issues have limited Nerium International's capabilities to fully
10 support international expansion and to run the appropriate promotions to grow the sales force.

11 55. In fact, when Olson is faced with a new lawsuit or rumors about Nerium
12 International, himself, or Nerium's products, Olson would wage an assault on those companies,
13 their leadership teams, compensation plans, products, management, and ethics, via public platforms
14 such as conference calls, presentations, individual and group discussions.

15 56. Olson's outbursts and constant communication to the field regarding the litigation, or
16 threatened litigation, harm Nerium International by distracting the Brand Partners from driving sales
17 and causing widespread fear and disbelief within the sales ranks of the company.

18 57. Olson also started engaging in a pattern of conduct designed to belittle the Smiths.
19 Olson knew that the Smiths were Christians. Olson has made numerous disparaging comments to
20 the Smiths about Christianity.

21 58. On one occasion, at a public restaurant, Olson loudly proclaimed that Christian and
22 the Mormon religions were "frauds." This particular meeting was over breakfast at a Dallas hotel
23 that Smith's called upon to discuss memorializing the Ownership Promises. Olson explained how
24 the story of Jesus Christ is so unbelievably "farfetched and stupid" that he could not believe so
25 many "idiots" fall for it. This was not an isolated incident.

26 59. However, when Olson is in front of audiences trying to promote Nerium
27 International, Olson has been known to quote Bible verses or discuss his spirituality.
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1 60. In general, Olson is a very rude and aggressive person. He treats subordinates very
2 poorly. The Smiths have witnessed Olson engage in numerous hostile encounters with flight
3 attendants, service people and innocent bystanders. Olson frequently makes rude and insensitive
4 comments towards such persons calling them “fat,” “ugly,” “stupid,” “disgusting,” just to name a
5 few.

6 61. The abovementioned statements, and others, created a highly unpleasant and hostile
7 work environment for the Smiths and others. The Smiths were highly offended by Olson’s conduct,
8 in particular his demeaning statements about Christianity, and have felt discriminated against.

9 62. After experiencing Olson’s conduct first-hand, the Smiths decided that they could
10 not be associated with such demeaning behavior and thereafter withdrew their personal associations
11 with Olson and limited their interactions to business activities only. As a result, on or around 2013,
12 the Smiths pulled away from developing a deeper personal relationship with Olson.

13 63. The Smiths’ primary concern at Nerium International was for the thousands of Brand
14 Partners whom the Smiths think of as family. Olson has made many decisions that the Smiths
15 disagreed with and objected to that ultimately hurt Nerium International. When Olson’s decisions
16 were proven to be harmful to the company Olson repeatedly publicly blamed the Smiths even
17 though Olson knew these poor business decisions were Olson’s decisions and not the Smiths’.

18 **IX. OLSON’S FRAUDULENT CONDUCT**

19 64. Recently, the Smiths learned that Olson was intentionally misrepresenting the
20 “Nerium” products sold by Nerium International in an effort to defraud other Brand Partners and
21 customers of Nerium International. Olson and Nerium International were subsequently sued by the
22 biotech company (which owns 30% equity interest in Nerium International) which developed the
23 “Nerium” products – in this lawsuit, the biotech company claims that Olson and Nerium
24 International has no right to the “Nerium” products.

25 65. In anticipation that Nerium International would lose the abovementioned lawsuit,
26 and that as a result Nerium International would lose access to the “Nerium” product line, Olson
27 directed Nerium International to begin developing alternative products.
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1 73. In or about August of 2011, Olson made the following material promises to the
2 Smiths, on behalf of Nerium International and himself: 1) Mark and Tammy Smith would **each**
3 have 5% equity interest in Nerium International (the Smiths would together own 10% of Nerium
4 International); 2) the Smiths would be “co-founders” of Nerium International; 3) Nerium
5 International would pay the Smiths a combined 15% royalty, in perpetuity, on all the back office
6 subscription fees generated by Nerium International, which was subsequently referred to as
7 “Nerium Edge.”

8 74. Since prior to joining Nerium International until the present and at all times in
9 between, Olson has repeatedly assured the Smiths that the abovementioned Ownership Promises
10 would be honored. Olson has made these assurances on numerous occasions and at numerous
11 meetings in California.

12 75. Subsequently, Olson promised the Smiths that Nerium International would install
13 and pay Mark Smith and Tammy Smith as the “Master Distributors” at Nerium International, and
14 permanently compensate the Smiths to the highest compensation level personally achieved under
15 the Nerium International compensation plan, which would allow the Smiths to stop focusing on
16 their commissionable network and stop actively recruiting to maintain their qualification.

17 76. Plaintiffs are informed and believe and thereon allege that the above-referenced
18 promises were made by Olson with intent to induce the Smiths to leave Pre-Paid Legal and join
19 Nerium International, and then to stay at Nerium International and redouble their sales efforts, and
20 all such promises were made with the intent to defraud the Smiths as Olson did not intend to honor
21 these promises (*i.e.*, oral contracts). This promise was false at the time it was made, and each
22 subsequent time this promise was repeated, as demonstrated by the fact that Olson refused to
23 confirm the existence of the promise in writing, and refused to repeat the promise in the presence of
24 others. Defendant Olson informed Plaintiffs that the above-referenced oral agreements could not
25 initially be reduced to writing, although the agreements were subsequently confirmed by emails
26 and/or other conversations between Defendant Olson and the Smiths.

1 83. The Smiths were enticed to leave Pre-Paid Legal and join Olson at Nerium
2 International as “Brand Partners” in reliance upon the Ownership Promises that Olson made to the
3 Smiths, on behalf of himself and Nerium International.

4 84. In or about August of 2011, Olson made the following promises to the Smiths: 1)
5 Mark Smith and Tammy Smith would each receive a 5% equity interest in Nerium International
6 (the Smiths would together own 10% of Nerium International); 2) the Smiths would be “co-
7 founders” of Nerium International; and 3) Nerium International would pay the Smiths a combined
8 15% royalty, in perpetuity, on all the back office subscription fees generated by Nerium
9 International, which was subsequently referred to as “Nerium Edge.”

10 85. Since prior to joining Nerium International until the present and at all times in
11 between, Olson has repeatedly assured the Smiths that the abovementioned Ownership Promises
12 would be honored. Olson has made these assurances on numerous occasions and at numerous
13 meetings in California.

14 86. Subsequently, Olson, on behalf of Nerium International and on behalf of himself
15 promised to install and pay Mark Smith and Tammy Smith as the “Master Distributors,” and
16 permanently compensate the Smiths to the highest compensation level personally achieved under
17 the Nerium International compensation plan.

18 87. Plaintiffs have performed and complied with all conditions and obligations required
19 under the oral contract.

20 88. Defendants breached the above-referenced oral contracts by: 1) failing to issue
21 Mark Smith and Tammy Smith the promised 10% (5% each) equity in Nerium International; 2)
22 failing to properly recognize Mark Smith and Tammy Smith as the “co-founders” of Nerium
23 International until July 22, 2017; 3) failing to install and pay Mark Smith and Tammy Smith as the
24 “Master Distributors,” and compensate the Smiths at the highest compensation level achieved under
25 the Nerium International compensation plan; and 4) failing to pay Mark and Tammy Smith a
26 combined 15% royalty on back office subscription fees.

27 89. As a direct, proximate and foreseeable result of the breach of the oral contract by
28 Defendants, Plaintiffs have incurred, and will continue to incur, general and special damages, the

1 exact nature and full extent of which exceeds the jurisdictional amount, the exact amount of
2 damages to be determined at trial.

3 90. As a direct, proximate and foreseeable result of the breach of the oral contract by
4 Defendants, Plaintiffs have been compelled to incur attorneys' fees, court costs, and other expenses
5 related to this action, and may in the future be compelled to incur additional expenses in pursuing
6 this litigation.

7 **THIRD CAUSE OF ACTION**

8 **Breach of Partially Oral and Written Contract**

9 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International; JOP;

10 Olson; and DOES 1 – 10)

11 91. Plaintiffs incorporate each and every allegation contained in the preceding
12 paragraphs of this Complaint as fully set forth, and further alleges:

13 92. The Smiths were enticed to leave Pre-Paid Legal and join Olson at Nerium
14 International as “Brand Partners” in reliance upon the Ownership Promises that Olson made to the
15 Smiths, on behalf of himself and Nerium International.

16 93. In addition to the master distributor promise and the Ownership Promises, as set
17 forth above, Olson, on behalf of Nerium International and on behalf of himself, on or about August
18 of 2011 orally promised to compensate Mark Smith and Tammy Smith as “Brand Partners,” on a
19 commission basis, based on an overall volume of sales in accordance with the Nerium International
20 compensation plan.

21 94. Based on information and belief, the Smiths never executed the Nerium International
22 United States Independent Brand Partner Application and Agreement (“Brand Partner Agreement”)
23 and never agreed to comply with the rules, regulations, policies, and procedures contained in the
24 Brand Partner Policies and Procedures Manual, including but not limited to the arbitration, non-
25 competition, governing law, jurisdiction, or venue provisions, upon their acceptance of the promise
26 to be compensated as a “Brand Partner.”

27 95. Plaintiffs have performed and complied with all conditions and obligations required
28 under the partially oral and partially written “Brand Partner” contract.

1 compensate the Smiths to the highest compensation level personally achieved under the Nerium
2 International compensation plan.

3 101. Defendants breached the above-referenced oral contracts by: 1) failing to issue
4 Mark Smith and Tammy Smith the promised 10% (5% each) equity interest in Nerium
5 International; 2) failing to properly recognize Mark Smith and Tammy Smith as the “co-founders”
6 of Nerium International until July 22, 2017; 3) failing to install and pay Mark and Tammy Smith as
7 the “Master Distributors;”; (4) failing to permanently compensate the Smiths to the highest
8 compensation level personally achieved under the Nerium International compensation plan; and 5)
9 failing to pay Mark and Tammy Smith a combined 15% royalty on back office subscription fees.

10 102. Each and every contract contains an implied covenant of good faith and fair dealing
11 in which neither party will do anything that will deprive the other party of the benefits of a contract.

12 103. This implied covenant of good faith and fair dealing obligated Defendants from
13 taking or failing to take action to undermine or contravene the contract between Plaintiffs and
14 Defendants.

15 104. Plaintiffs performed all of its obligations under the contract with Defendants,
16 excepting those obligations that Mark and Tammy Smith were excused from performing.

17 105. Defendants breached the covenant of good faith and fair dealing under the contract
18 by **never giving** Mark Smith and Tammy Smith the promised 10% (5% each) equity interest in
19 Nerium International.

20 106. Defendants breached the covenant of good faith and fair dealing under the contract
21 by not properly recognizing Mark Smith and Tammy Smith as the “co-founders” of Nerium
22 International until July 22, 2017.

23 107. Defendants breached the covenant of good faith and fair dealing under the contract
24 by failing to install and pay Mark Smith and Tammy Smith as the “Master Distributors,” and
25 permanently compensate the Smiths to the highest compensation level personally achieved under
26 the Nerium International compensation plan.

27 108. Defendants breached the covenant of good faith and fair dealing by failing to pay
28 Mark Smith and Tammy Smith a combined 15% royalty on back office subscription fees.

1 109. Defendants breached the covenant of good faith and fair dealing by engaging in
2 conduct designed to undermine the Smiths' position in Nerium International by disseminating false
3 statements (i.e., slander) about the Smiths to Brand Partners.

4 110. As a direct, proximate and foreseeable result of the breach of contract by Defendants,
5 Plaintiffs have incurred, and will continue to incur, general and special damages, the exact nature
6 and full extent of which exceeds the jurisdictional amount, which will be determined at trial.

7 111. As a direct, proximate and foreseeable result of the breach of the contract by
8 Defendants, Plaintiffs have been compelled to incur attorneys' fees, court costs and other expenses
9 related to this action, and may in the future be compelled to incur additional expenses in pursuing
10 this litigation.

11 **FIFTH CAUSE OF ACTION**

12 **Breach of Implied Covenant of Good Faith and Fair Dealing (Partially Oral and Written**
13 **Contract)**

14 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International; JOP;
15 Olson; and DOES 1 – 10)

16 112. Plaintiffs incorporate each and every allegation contained in the preceding
17 paragraphs of this Complaint as fully set forth, and further alleges:

18 113. The Smiths were enticed to leave Pre-Paid Legal and join Olson at Nerium
19 International as "Brand Partners" in reliance upon the Ownership Promises that Olson made to the
20 Smiths, on behalf of himself and Nerium International.

21 114. In or about August of 2011, Olson, on behalf of Nerium International, orally
22 promised to compensate Mark Smith and Tammy Smith as "Brand Partners," on a commission
23 basis, based on an overall volume of sales in accordance with the Nerium International's
24 compensation plan.

25 115. Based on information and belief, the Smiths never executed the Nerium International
26 Brand Partner Agreement and never agreed to comply with the rules, regulations, policies, and
27 procedures contained in the Brand Partner Policies and Procedures Manual, including but not
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1 limited to the arbitration, non-competition, governing law, jurisdiction, or venue provisions, upon
2 their acceptance of the promise to be compensated as a “Brand Partner.”

3 116. Each and every contract contains an implied covenant of good faith and fair dealing
4 in which neither party will do anything that will deprive the other party of the benefits of a contract.

5 117. This implied covenant of good faith and fair dealing obligated Defendants from
6 taking or failing to take action to undermine or contravene the contract between Plaintiffs and
7 Defendants.

8 118. Plaintiffs performed all of its obligations under the contract with Defendants,
9 excepting those obligations that Mark Smith and Tammy Smith were excused from performing.

10 119. Defendants breached the covenant of good faith and fair dealing under the contract
11 by slandering the professional and personal reputation of Mark Smith and Tammy Smith.

12 120. Defendants breached the covenant of good faith and fair dealing under the contract
13 by engaging in conduct which is abusive and disrespectful of Mark Smith and Tammy Smith.

14 121. Defendants breached the covenant of good faith and fair dealing under the contract
15 by engaging in conduct which is dishonest and harmful to Mark Smith and Tammy Smith.

16 122. As a direct, proximate and foreseeable result of the breach of contract by Defendants,
17 Plaintiffs have incurred, and will continue to incur, general and special damages, the exact nature
18 and full extent of which exceeds the jurisdictional amount, which will be determined at trial.

19 123. As a direct, proximate and foreseeable result of the breach of the contract by
20 Defendants, Plaintiffs have been compelled to incur attorneys’ fees, court costs and other expenses
21 related to this action, and may in the future be compelled to incur additional expenses in pursuing
22 this litigation.

23 **SIXTH CAUSE OF ACTION**

24 **Breach of Fiduciary Duty**

25 (Plaintiffs Mark Smith and Tammy Smith Against Olson, JOP, and DOES 1 – 10)

26 124. Plaintiffs incorporate each and every allegation contained in the preceding
27 paragraphs of this Complaint as fully set forth, and further alleges:
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1 that these decisions were made by Olson. These false statements were heard by numerous
2 individuals known and not known to Plaintiffs. These words were defamatory and slanderous per se
3 because they tend to injure Plaintiffs in their profession by imputing to them poor business
4 judgment that has a natural tendency to lessen the likeness and respectability of Plaintiffs'
5 leadership within the sales force of the company. The words uttered were a false statement because
6 Olson knew he made the poor business decisions, and Olson knew that the Smiths had nothing to do
7 with his decisions.

8 131. On or about November 2017, Plaintiffs learned that Defendants Olson and DOES 1-
9 10 defamed and damaged Plaintiffs by disseminating false statements to other Brand Partners that
10 Mark Smith and Tammy Smith were “lazy,” “not working hard enough,” and were responsible for
11 the decrease in company sales, which caused direct harm to the Smith’s reputation. In addition,
12 Olson disseminated false statements that no one wanted Tammy to work at Nerium International.
13 These false statements were heard by numerous persons whose names are known and not known to
14 Plaintiffs. These words were defamatory and slanderous per se because they tend to injure Plaintiffs
15 in their profession by imputing to them laziness and poor work ethic which has a natural tendency
16 to lessen the likeness and respectability of Plaintiffs’ leadership within the sales force of the
17 company, which likely results in decreased sales performance for the company and the Smiths. The
18 words uttered were false statements because Olson knew that the Smiths were not lazy, were
19 working very hard, were not responsible for a decrease in company sales, and people did, in fact,
20 want Tammy to work at Nerium International.

21 132. As a result of the above-described words, Plaintiffs have suffered general damages to
22 their reputation.

23 133. As a further proximate result of the above-described words, Plaintiffs have lost the
24 ability to retain Brand Partners who heard Olson’s false statements all to the Plaintiffs’ injury
25 according to proof.

26 134. The above-described words spoken by Olson were said with malice in that Olson
27 dislikes the Smiths, and thus an award of exemplary and punitive damages is justified.

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EIGHTH CAUSE OF ACTION

Civil Conspiracy

(Plaintiffs Mark Smith and Tammy Smith Against Nerium International; JOP;
Olson; and DOES 1 – 10)

135. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs of this Complaint as fully set forth, and further alleges:

136. At all relevant times, Defendants Olson and DOES 1-10 knowingly and willfully conspired and agreed amongst themselves to defame and damage Plaintiffs by disseminating false statements to other Brand Partners that Mark Smith and Tammy Smith were “lazy,” “not working hard enough,” and were responsible for the decrease in company sales, which caused direct harm to Nerium International as a result.

137. Defendants Olson and DOES 1-10 did the acts and things herein alleged pursuant to, and furtherance of, the conspiracy and above-alleged agreement.

138. Plaintiffs are informed and believe and thereon allege that the last overt act in pursuance of the above-described conspiracy occurred on or about November 2017, on which date Defendant Olson and Defendant DOES 1-10 directly contacted numerous Brand Partners and defamed and damaged the professional and personal reputation of Plaintiffs Mark Smith and Tammy Smith.

139. As a proximate result of the wrongful acts herein alleged, Plaintiffs have been generally damaged.

140. In doing the things herein alleged, Defendants acted willfully and with the intent to cause injury to the Plaintiffs. Defendants consciously disregarded Plaintiffs’ rights, thereby warranting an assessment of punitive damages in an amount appropriate to punish Defendants and deter others from engaging in similar misconduct.

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1 **NINTH CAUSE OF ACTION**

2 **Conversion**

3 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International; JOP;
4 Olson; and DOES 1 – 10)

5 141. Plaintiffs incorporate each and every allegation contained in the preceding
6 paragraphs of this Complaint as fully set forth, and further alleges:

7 142. At all times herein mentioned, and in particular on or about August of 2011,
8 Plaintiffs were, and still are, the rightful legal and/or equitable owners of: 1) a 10% equity interest
9 in Nerium International and any and all member distributions stemming therefrom; and 2) the
10 combined 15% royalty on back office subscription fees.

11 143. Plaintiffs were, and still are, entitled to the possession of the following personal
12 property, namely: 1) a combined 10% equity interest in Nerium International; 2) 10% percent of
13 any and all member distributions since August 2011; and 3) a combined 15% royalty from all back
14 office subscription fees collected since August 2011.

15 144. Between August 2011 and August 2015, Nerium International reached \$1 billion in
16 cumulative sales. Based upon information and belief, Plaintiffs allege the Plaintiffs' property
17 interests described above have a current value in excess of \$100,000,000.

18 145. On numerous occasions since August 2011, Plaintiffs demanded the immediate
19 return of the above-mentioned property interests but Defendants failed and refused, and continues to
20 fail and refuse, to return the property to Plaintiffs.

21 146. As a proximate result of Defendants' conversion, Plaintiffs failed to receive: 1) a
22 combined 10% equity interest in Nerium International; 2) 10% percent of any and all member
23 distributions since August 2011; and 3) a combined 15% royalty from all back office subscription
24 fees collected since August 2011, which are the natural, reasonable, and proximate results of
25 Defendants' conversion, all to Plaintiffs' damage in excess of \$100,000,000. At all relevant times,
26 Olson and Nerium International took and converted the abovementioned property for Olson and
27 Nerium International's own use.

1 Plaintiffs are informed and believe and thereon allege that the amount owed, however, exceeds the
2 sum of \$100,000,000.

3 **ELEVENTH CAUSE OF ACTION**

4 **Breach of Contract (Implied in Fact)**

5 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International; JOP;
6 Olson; and DOES 1 – 10)

7 153. Plaintiffs incorporate each and every allegation contained in the preceding
8 paragraphs of this Complaint as fully set forth, and further alleges:

9 154. In the event the oral and partially oral and partially written contracts described above
10 fail to establish the basis of a contract, Plaintiffs alternatively contend that the circumstances
11 surrounding the Smiths status as “Co-Founders & Chief Field Officers” at Nerium International,
12 their assumption of sales responsibilities with respect to worldwide sales of products, and the
13 Smiths’ actions in soliciting and ultimately recruiting Brand Partners created an implied-in-fact
14 contract to compensate the Smiths for their sales and non-sales related efforts on behalf of Nerium
15 International.

16 155. Olson on behalf of Nerium International solicited Plaintiffs efforts as described
17 above under circumstances in which they reasonably understood that compensation would be owed
18 for Plaintiffs' efforts, and in which compensation is customarily paid for such efforts. Plaintiffs did
19 everything asked of them and reasonably necessary to justify the payment of compensation, except
20 to the extent such requirements were waived by Olson and/or Nerium International.

21 156. Plaintiffs have each demanded payment of compensation from Olson and/or Nerium
22 International for their efforts as described above, however, despite such demands, Olson and
23 Nerium International refuse to pay compensation, and continue to retain benefits owed to the
24 Plaintiffs for their efforts.

25 157. As a result of Olson and Nerium International’s failure and refusal to pay
26 compensation, the Smiths have been injured in an amount subject to a proof at trial, but which in
27 any event exceeds the jurisdictional minimum of this court.

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1 **TWELFTH CAUSE OF ACTION**

2 **Violations of Business And Professions Code Section 17200**

3 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International, Olson, and DOES 1-10)

4 158. Plaintiffs incorporate each and every allegation contained in the preceding
5 paragraphs of this Complaint as fully set forth, and further alleges:

6 159. Plaintiffs are informed and believes that Nerium International is in custody of and
7 have control of royalty payments, equity distributions, and/or commission payments owed to
8 Plaintiffs to which Nerium International is not entitled, and that Nerium International has
9 improperly retained these royalty payments, equity distributions, and/or commission payments
10 derived from the above alleged fraudulent acts and representations, as constructive trustee for
11 Plaintiffs' benefit.

12 160. California Business and Professions Code § 17200 *et seq.* prohibits the commission
13 of any "unlawful, unfair, and/or fraudulent" business act or practice. The business acts and practices
14 of Olson, Nerium International, and DOES 1-10 and each of them, as alleged herein, constituted a
15 continuous and continuing course of conduct of unfair business by means of unfair, unlawful,
16 and/or fraudulent business acts or practices within the meaning of California's Unfair Competition
17 Law, Bus. & Prof. Code § 17200 *et seq.* Plaintiffs reserve the right to identify additional violations
18 of law as further investigation warrants.

19 161. Through their actions, Olson, Nerium International, and Does 1-10 engaged in
20 unlawful, unfair and/or fraudulent business acts and practices within the meaning of Bus. & Prof.
21 Code § 17200 *et seq.* because each Defendants' conduct, business affairs and practices as alleged
22 herein violate state statutes and regulations, and state common law, each of which constitutes an
23 independent and separate violation of Bus. & Prof. Code § 17200 *et seq.*

24 162. These practices include, but are not limited to: (1) fraudulent misrepresentations and
25 omissions of material facts by each Defendant regarding Nerium International's true financial
26 condition and business prospects in order to benefit themselves individually at Plaintiffs' expense
27 and to Plaintiffs' detriment; (2) fraudulent misrepresentations and omissions of material facts by
28 each Defendant regarding the quality of Nerium International's products; and (3) fraudulent

1 misrepresentation and omissions of material facts regarding the existence and results of laboratory
2 testing of Nerium International's products.

3 163. The California Supreme Court has stated that the UCL's "broad and sweeping
4 language" was designed to deal with business practices which on [their] face violate the
5 fundamental rules of honesty and fair dealing." *Cel-Tech Communications, Inc. v. Los Angeles*
6 *Cellular Telephone Co.*, 20 Cal. 4th 163,181 (1999). This is exactly the type of scheme which is the
7 basis of Plaintiffs' First, Second, Third, Fourth, Fifth, Sixth, and Seventh Causes of Action.

8 164. Defendants' unlawful, unfair and/or fraudulent business acts and practices were
9 designed to deceive and harm Plaintiffs. Defendants unfairly damaged Plaintiffs for Defendants'
10 own economic benefit. Plaintiffs injuries arise out of Defendants fraudulent misrepresentations and
11 omissions of material fact which caused Plaintiffs to invest time and money in Nerium International
12 which they would not have if Defendants had accurately represented Nerium International's true
13 financial condition, the quality of Nerium International's products, the existence and results of peer-
14 reviewed laboratory testing of Nerium International's products.

15 165. These practices were perpetrated against Plaintiffs, who, as a direct and proximate
16 result, have been substantially injured and have lost money and property.

17 166. Plaintiffs are entitled to restitution and injunctive relief to restore the money and
18 property that Defendants wrongfully acquired. Further, Defendants should be ordered to disgorge
19 any and all profits and benefits Defendants may have gained through interest or earnings on the
20 money they wrongfully acquired.

21 **THIRTEENTH CAUSE OF ACTION**

22 **Constructive Trust**

23 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International)

24 167. Plaintiffs incorporate each and every allegation contained in the preceding
25 paragraphs of this Complaint as fully set forth, and further alleges:

26 168. On or about October 2016, the Smiths achieved the highest compensation level at
27 Nerium International. Accordingly, since October 2016 the Smiths were entitled to the highest
28 compensation level in perpetuity, as repeatedly promised by Olson on behalf of Nerium

1 International. However, since on or about October 2016, the Smiths have not been compensated at
2 the highest level at Nerium International. As a result, the Smiths are entitled to the amount of
3 \$491,250.

4 169. Plaintiffs are informed and believe that Nerium International is in custody of and has
5 control of the \$491,250 the Plaintiffs are entitled, which Nerium International is not entitled, and
6 that Nerium International has improperly retained these payments derived from the above alleged
7 fraudulent acts and representations, as constructive trustee for Plaintiffs' benefit.

8 170. Plaintiffs are informed and believes that payments in the amount of \$491,250 are
9 held in constructive trust for Plaintiffs and should be paid to Plaintiffs.

10 171. Plaintiffs are informed and believes that these assets and funds were knowingly and
11 wrongfully withheld by Plaintiffs with full knowledge of Plaintiffs' rights and claims.

12 172. Nerium International is, therefore, constructive trustee of all of the assets and funds
13 wrongfully withheld and diverted as alleged herein.

14 **FOURTEENTH CAUSE OF ACTION**

15 **Declaratory Relief (Oral Contract)**

16 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International; JOP;

17 Olson; and DOES 1 – 10)

18 173. Plaintiffs incorporate each and every allegation contained in the preceding
19 paragraphs of this Complaint as fully set forth, and further alleges:

20 174. A dispute and actual controversy has arisen and now exists between Plaintiffs and
21 Defendants, and each of them, in that Plaintiffs contend they are owed in excess of \$100,000,000,
22 excluding interest, from Defendants for the promised 10% (5% each) equity interest in Nerium
23 International and the 15% royalty due to each of the Smiths for the back office subscription fees.

24 175. Plaintiffs desire a judicial determination of the respective rights and duties of
25 Plaintiffs and Defendants, and each of them, with respect to the damages claimed in this Complaint.

26 176. Such a declaration is necessary and appropriate at this time so Plaintiffs may
27 ascertain their rights to recovery with respect to the damages claimed in this Complaint.

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FIFTEENTH CAUSE OF ACTION

Declaratory Relief (Partially Oral and Written Contract)

(Plaintiffs Mark Smith and Tammy Smith Against Nerium International; JOP;
Olson; and DOES 1 – 10)

177. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs of this Complaint as fully set forth, and further alleges:

178. An actual controversy has arisen and now exists between Plaintiffs and Defendants concerning their respective rights and duties in that Plaintiffs contend that the non-competition, non-solicitation, governing law, venue, jurisdiction, and arbitration provisions contained in the partially oral and partially written Brand Partner Agreement are unenforceable because these provisions were never part of the contract agreed to and performed by Plaintiffs.

179. In the alternative, Plaintiffs contend that the non-competition, non-solicitation, governing law, venue, jurisdiction, and arbitration provisions contained in the Brand Partner Agreement shall not to be given effect and are void due to a strong California public policy. Pertinently, these provisions would: 1) restrain Plaintiffs from engaging in a lawful profession, trade, or business; 2) the application of the law from another state must not be allowed to defeat that strong policy; and 3) are unconscionable.

180. Plaintiffs desire a judicial determination of their rights and duties, and a declaration as to whether the provisions are enforceable and/or void pursuant to strong California public policy.

181. A judicial declaration is necessary and appropriate at this time under the circumstances in order that Plaintiffs may ascertain their rights and duties under the Brand Partner Agreement and would lessen the burden being borne by Plaintiffs due to the unsettled state of affairs.

SIXTEENTH CAUSE OF ACTION

Intentional Infliction of Emotional Distress

(Plaintiffs Mark Smith and Tammy Smith Against Nerium International; Olson; and DOES 1 – 10)

182. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs of this Complaint as fully set forth, and further alleges:

1 183. When Olson did the acts described in this complaint, Olson, as an employer, abused
2 a relation and position which gave him power to damage Plaintiffs' interests. Olson knew that
3 Plaintiffs were susceptible to injury through mental distress.

4 184. When Olson did the acts described in this complaint, Olson acted intentionally and
5 unreasonably and engaged in extreme and outrageous conduct. Olson did such acts deliberately,
6 intentionally and recklessly so as to cause both Mark and Tammy Smith distress. Olson's conduct
7 was done with knowledge that Plaintiffs' distress would thereby increase, and was done with
8 wanton and reckless disregard of the consequences to both Mark and Tammy Smith.

9 185. Based on the acts described in this complaint, Mark and Tammy Smith are entitled to
10 pursue this cause of action.

11 186. The above acts of Olson caused Mark and Tammy Smith severe emotional distress,
12 anxiety, sleeplessness, and were outrageous and beyond the scope of their employment. As a direct,
13 proximate and foreseeable result of the aforesaid conduct of Olson, Mark and Tammy Smith have
14 suffered damages and injuries set forth below.

15 187. As a result of the aforesaid acts of Olson, Mark and Tammy Smith have become
16 upset, distressed and aggravated. Mark and Tammy Smith claim general damages for such distress
17 and aggravation in an amount of which will be proven at time of trial.

18 188. As a proximate result of the aforesaid acts of Olson, Mark and Tammy Smith have
19 foreseeably suffered and continue to suffer substantial loss of earnings in an amount according to
20 proof at the time of trial. Mark and Tammy Smith claim such amount as damages together with
21 prejudgment interest.

22 189. As a direct and proximate result of the aforementioned wrongful conduct of Olson,
23 Mark and Tammy Smith will suffer additional loss of earnings, reduced earning capacity in the
24 future, and other incidental and consequential damages in an amount according to proof at the time
25 of trial.

26 190. As a proximate result of the conduct complained of herein, Mark and Tammy Smith
27 suffered and continues to suffer distress, anguish and shock, and thereby sustained serious injuries
28 to their physical and mental health, strength and activity, causing them physical and emotional pain,

1 all to general damage in such amount as may be proven. Said amount is within the jurisdiction of
2 the Superior Court of the State of California.

3 191. As a direct and proximate result of the aforementioned wrongful conduct of
4 defendants, and each of them, Mark and Tammy Smith incurred medical expenses, the exact nature
5 and extent of which are unknown to Plaintiffs at this time and Plaintiffs will ask leave of court to
6 amend this complaint in this regard when the same have been ascertained.

7 192. As a direct and proximate result of the aforementioned wrongful conduct of
8 defendants, and each of them, Plaintiffs will be required to incur additional future medical expenses
9 all to their further damage in an amount to be proven at trial.

10 193. To the extent distress to Mark and Tammy Smith was caused by the acts of Olson,
11 Plaintiffs request the assessment of punitive damages against Olson in an amount appropriate to
12 punish and make an example of Olson, because the acts taken toward Mark and Tammy Smith were
13 carried out in a deliberate, cold, callous and intentional manner in order to injure and damage
14 plaintiff. *See Heller v. Pillsbury Madison & Sutro*, (1996) 50 Cal.App.4th 1367 (punitive damages
15 are recoverable in actions for intentional infliction of emotional distress).

16 194. Wherefore, plaintiff prays for judgment against the defendants as hereinafter set
17 forth.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs pray for relief, as follows:

20 **For Cause of Action No. 1 (Fraud):**

- 21 1. For compensatory damages according to proof plus interest for monies owed to
22 Plaintiffs by Defendants;
- 23 2. For incidental and special damages according to proof;
- 24 3. For pre-judgment interest and other interest on the sum of compensatory damages
25 awarded as permitted or required by law;
- 26 4. For punitive damages;
- 27 5. For any other remedy to which Plaintiffs may be entitled under any California law;

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6. For such other and further relief as this Court deems just and proper.

For Causes of Action No. 2 through 6, 11, and 12:

1. For compensatory damages according to proof, plus interest for monies owed to Plaintiffs by Defendants;

2. For incidental and special damages according to proof;

3. For return to Plaintiffs of monies paid to Defendant according to proof;

4. For pre-judgment interest and other interest on the sum of compensatory damages awarded as permitted or required by law;

5. For any other remedy to which Plaintiffs may be entitled under any California law; and

6. For such other and further relief as this Court deems just and proper.

For Cause of Action No. 7 (Defamation):

1. For general damages according to proof;

2. For special damages according to proof;

3. For punitive damages;

4. For costs of suit incurred herein; and

5. For such other and further relief as the Court may deem proper.

For Cause of Action No. 8 (Civil Conspiracy):

1. For general damages;

2. For damages for loss of earnings according to proof;

3. For exemplary or punitive damages;

4. For costs of suit herein incurred; and

5. For such other and further relief as the Court may deem proper.

For Cause of Action No. 9 (Conversion):

1. For the value of the property converted;

2. For compensatory damages according to proof, plus interest for monies owed to Plaintiffs by Defendants;

- 1 3. For damages for time and money properly expended in pursuit of the converted
- 2 property according to proof;
- 3 4. For punitive and exemplary damages;
- 4 5. For any other remedy to which Plaintiffs may be entitled under any California law,
- 5 including treble damages and attorneys' fees as authorized by the California Penal Code;
- 6 6. For costs of suit herein incurred; and
- 7 7. For such other and further relief as the Court may deem proper.

8 **For Cause of Action No. 10 (Accounting):**

- 9 1. For an accounting between Plaintiffs and Defendants;
- 10 2. For payment over to Plaintiffs of the amount due from Defendants as a result of the
- 11 account and interest on that amount from and after August of 2011;
- 12 3. For costs of suit herein incurred; and
- 13 4. For such other and further relief as the Court may deem proper.

14 **For Cause of Action No. 13 (Constructive Trust):**

- 15 1. For a judicial declaration stating that Nerium International holds the amount of
- 16 \$491,250 as constructive trustee for the benefit of Plaintiffs;
- 17 2. For costs of suit incurred herein; and
- 18 3. For such other further relief as the court may deem proper.

19 **For Cause of Action No. 14 (Declaratory Relief – Oral Contract):**

- 20 1. For a judicial declaration stating the respective rights and duties of Plaintiffs and
- 21 Defendants, and each of them, with respect to the damages claimed in this Complaint.

22 **For Cause of Action No. 15 (Declaratory Relief – Partially Oral and Written Contract):**

- 23 1. For a judicial declaration stating the respective rights and duties of Plaintiffs and
- 24 Defendants, and each of them, with respect to the non-competition, non-solicitation, governing law,
- 25 venue, jurisdiction, and arbitration provisions contained in the Brand Partner Agreement.

26 **For Cause of Action No. 16 (Intentional Infliction of Emotional Distress):**

- 27 1. For compensatory damages as allowed by law according to proof at trial;
- 28 2. For medical and related expenses as allowed by law according to proof at trial;

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- 3. For an award of punitive damages as allowed by law and according to proof at trial;
- 4. For lost earnings and related expenses as allowed by law according to proof at trial;
- 5. For wages, interest, damages and penalties as allowed by law and according to proof at trial;
- 6. For prejudgment interest on all amounts claimed, as permitted by law; and
- 7. For such other and further relief as the Court deems just and proper.

Dated: February 23, 2018

BOHM WILDISH & MATSEN, LLP

By: Christopher Green
James G. Bohm
Christopher J. Green
Benjamin R. Schwefel

Attorneys for Plaintiffs,
MARK AND TAMMY SMITH

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DEMAND FOR JURY TRIAL

Pursuant to Code of Civil Procedure section 631, Mark Smith and Tammy Smith hereby demand trial by jury on all issues raised by the Complaint.

Dated: February 23, 2018

BOHM WILDISH & MATSEN, LLP

By: Christopher Green
James G. Bohm
Christopher J. Green
Benjamin R. Schwefel

Attorneys for Plaintiffs,
MARK AND TAMMY SMITH

EXHIBIT "A"

From: Jeff Olson [REDACTED]
Subject: Fw: Proposed LOI between JO Products and Mr. and Ms. Smith
Date: September 14, 2016 at 2:51:57 PM PDT
To: [REDACTED] Tammy Smith [REDACTED]
[REDACTED] Dan Bruce [REDACTED]

Hi..Here is the proposed term sheet covering our Equity agreement. As far as other things we have discussed I have addressed below.

No legs outside of your distributorship will be formed and none above it as well.

You will be the Master Distributor.

We will be adding the top three ranks as proposed by Deb and agreed to by Mark and you will be paid the LBB bonus when earned permanently.

I and the management team have no problem with co founder title when you feel it is the right time to implement.

As you know I am in the process of putting together a succession plan that will involve a governing board of which you will be on.

The above points can be part of a separate agreement.

Think this covers it all .. Look forward to a long and successful journey together.. Thanks